

APPENDIX D

1995 Agreement with the Wildlife Agencies ("Baldwin Agreement")

County of San Diego GPA 06-012



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DEPARTMENT OF PLANNING
AND
LAND USE

November 10, 1995

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Lower Avenue West
Carlsbad, CA 92007

Ms. Lari Sheehan
Assistant Chief Administrative Officer
County of San Diego
1600 Pacific Highway
San Diego, CA 92101

Mr. Ron Rempel
Department of Fish and Game
1416 9th Street
Sacramento, CA 95814

Mr. John Goss
City Manager
City of Chula Vista
276 Fourth Ave
Chula Vista, CA 91910

Dear Gentilepersons:

Enclosed is a summary of the elements of the Otay Ranch MSCP Subarea Plan agreement. I look forward to your questions or comments. The Baldwin Company does not object to public discussion of this agreement.

Sincerely,


Kim John Kilkenny
Vice President

Enclosure

KJK/cc

cc: Jerry Jamriska, Otay Ranch Project Team
Bob Leiter, City of Chula Vista
Bob Asher, County of San Diego
Ann Ewing, County of San Diego
Tom Oberbauer, County of San Diego

SOUTH COUNTY SUBAREA PLAN

The following are the elements of a proposed agreement between the City of Chula Vista, the County of San Diego, the California Fish and Game Department, the US Fish and Wildlife Agency, and the Baldwin Company concerning the South County/Otay Ranch MSCP Subarea Plan relative to Otay Ranch properties controlled by The Baldwin Company or Baldwin Company affiliates.

A. Elimination of Otay Ranch GDP/SRP Development Entitlements

The South County/Otay Ranch MSCP Subarea Plan will be prepared, and the Otay Ranch GDP/SRP Plan will be amended, to eliminate development entitlements for the following areas and to designate such areas as part of the MSCP Preserve.

1. Central Proctor Valley (Otay Ranch Village 14, See Exhibit 1)
 - a. PV1: Approximately 10 acres located west of Proctor Valley Road designated "L2" by the Otay Ranch GDP/SRP containing approximately 20 dwelling units.
 - b. PV2: Approximately 70 acres on the east side of Village 14, designated "L2" by the Otay Ranch GDP/SRP, containing approximately 35 dwelling units.
 - c. PV3: Approximately 119.2 acres of land in the southern portion of Village 14 designated by the Otay Ranch GDP/SRP as "LMV 3" and "LMV 2", containing approximately 290 dwelling units.
2. Resort Village (Village 13, See Exhibit 2)
 - a. R1: Approximately 40.5 acres of land in the eastern portion of Village 13 designated "L2" by the Otay Ranch GDP/SRP, containing approximately 81 dwelling units.
 - b. R2: Approximately 88 acres of development in the eastern portion of Village 13 designated "LMV 3" by the Otay Ranch GDP/SRP, containing approximately 264 dwelling units.
 - c. R3: Approximately 9 acres of development in the eastern portion of Village 13 designated "LMV 3" by the Otay Ranch GDP/SRP, containing approximately 27 dwelling units.
3. Southeast of the Lake (Village 15, See Exhibit 3)
 - a. SE1: Approximately 42 acres of development in the southwest portion of Village 15 designated "VL0.7" by the Otay Ranch GDP/SRP, containing approximately 16 dwelling units.

- b. SE2: Approximately 48 acres of development in the southwest portion of Village 15 designated "VL0.7 by the Otay Ranch GDP/SRP, containing approximately 17 dwelling units.

B. Areas of Development Added to the Otay Ranch GDP/SRP.

The South County/Otay Ranch MSCP Subarea Plan will be prepared, and the Otay Ranch GDP/SRP will be amended, to designate the following areas as developable and remove such areas from the Otay Ranch Preserve.

1. Poggi Canyon, (See Exhibit 4)

Land in Otay Ranch Villages One and Two, west of Paseo Ranchero (P1) will be designated developable for residential uses or for the construction of public infrastructure, (primarily Orange Avenue, related utilities and a trolley line). The expanded residential development areas within Otay Ranch ownership will equal approximately 140 acres (Village One and Village Two combined) and contain a land use designation of "LM 3", permitting 420 units. Development would also be permitted in the small Wolf Canyon finger between Village 2 and Village 3, currently omitted from development as a potential avian corridor linked to Poggi Canyon (P2). All these areas (Villages 1, 2 and 3) will be removed from the Otay Ranch Resource Preserve and excluded from the MSCP Preserve. The Poggi Canyon area east of Paseo Ranchero, between Village One and Village Two, is not part of the Otay Ranch Preserve, or of the Draft MSCP Preserve because the area contains low quality, fragmented and isolated habitats, not sustainable in the long term. Entitlements may be approved and development may proceed in that area resulting in the development of occupied habitats.

Portions of the land west of Paseo Ranchero (P1) are not within Otay Ranch ownership. These properties would be governed by this agreement and would not be included in the Subarea Preserve. Development entitlement for these properties would be determined by the City of Chula Vista, effective upon annexation.

2. Village 10 and 11 (See Exhibit 5)

- a. SC1 - Otay Valley Road. Realign Otay Valley Road/Hunte Parkway eastward to the road alignment depicted in Exhibit 5 (which roughly equates to the alignment contained in the Otay Ranch Phase 2 Progress Plan).
- b. SC2 - Village 10 and 11. Expand the development area in Villages 10 and 11, eastward to abut the newly aligned Otay Valley Road/Hunte Parkway, adding approximately 93 acres of development with a land use designation of "LMV 4.5", permitting approximately 460 units. This will cause a minor adjustment in the configuration of the adjacent community park to ensure that the area contains 25 acres of viable park land. (SC3)

3. Village Four (See Exhibit 6)

- a. Rock Mountain. Expand the development area in Village Four to include approximately 70 acres roughly located on Rock Mountain and increase the permissible number of dwelling units within Village Four by 350 units (the location of new units will be determined by the land use jurisdiction through the GDP/SRP amendment process).

4. Village Nine (See Exhibit 7)

- a. South of Otay Valley Road. Add approximately 10 acres in three new development areas to Village Nine south of Otay Valley Road connecting the existing four development "blobs". The land use jurisdiction may reallocate Village Nine dwelling units to the area south of Otay Valley Road.

C Other Considerations

1. City of Chula Vista and the County of San Diego will decrease densities within the Otay Ranch transit village cores from an average of 18 dwelling units per acre to 14.5 dwelling units per acre, resulting in a decrease of 1,057 units (Villages 1, 5, 6 and 8).
2. Draft the MSCP Subarea Plan and amend the Otay Ranch GDP/SRP and related documents to eliminate coastal sage scrub and maritime succulent scrub mitigation requirements for restoration.
3. California Department of Fish and Game agrees to approve the establishment of a Habitat Maintenance District to fund the Otay Ranch Resource Preserve pursuant to the provisions of the Habitat Maintenance District Act.
4. The parties agree to support the establishment of a federal wildlife refuge for the designated Otay Ranch open space areas east of the Otay Reservoir. Upon the establishment of such a refuge, the Fish and Wildlife Agency will be designated the Otay Ranch Preserve Owner/Manager for those portions of the Otay Ranch Preserve that lie within the refuge. The City and the County will thereafter require that Otay Ranch preserve land be conveyed to the Wildlife Refuge, consistent with the provisions of the Otay Ranch GDP/SRP, RMP and Preserve Conveyance Plan. Land conveyed to the Wildlife Refuge shall be the maintenance responsibility of the Fish and Wildlife Agency or its designee, without financial assistance from assessment districts or other financing or exaction mechanisms imposed by the City of Chula Vista or the County of San Diego.
5. The parties agree that the initial Otay Ranch Preserve Financing Plan program will be established to generate sufficient revenues to maintain the entire Otay Ranch Preserve without the creation a Wildlife Refuge. However, if a

Wildlife Refuge assumes maintenance responsibility for preserve land, the first priority for revenues diverted from maintenance of refuge land shall be for Otay Ranch Preserve Owner/Manager tasks within the western portions of the Preserve, which were not initially funded through the Phase 2 RMP finance mechanism (specifically the establishment and maintenance of a Nature Interpretive Center and research and education programs associated with the Nature Interpretive Center and the Otay Valley Regional Park).

6. The Sensitive Resource Study (SRS) area contained within the Otay Ranch Resort Village (Village 13) shall be removed from the Otay Ranch GDP/SRP and State and Federal agencies shall not object to development of such areas pursuant to the Otay Ranch GDP/SRP/SRP.
7. The State and Federal Resource Agencies agree to issue necessary "take permits" for the development of Otay Ranch consistent with the land use entitlements contained in the Otay Ranch GDP/SRP as modified through the implementation of this agreement.

D. Implementation Process

This agreement shall be implemented through the following process:

1. Subarea Plan. The City of Chula Vista and the County of San Diego shall proceed with the development of their respective MSCP Subarea Plans which incorporate the Otay Ranch Planning Area. The Subarea Plans area shall reflect the provisions of the Otay Ranch GDP/SRP as proposed for modification by this agreement. For those areas for which it is proposed that current Otay Ranch development entitlements be eliminated (Section A above), the Subarea Plan shall provide that take permits will not be authorized. For those areas for which it is proposed that additional areas of development be authorized (Section B above), the Subarea Plan shall provide that take permits will be authorized. The Subarea Plan text shall also incorporate the provisions of "Other Considerations" as discussed in Section C above.
2. MSCP Process. The Subarea Plans shall be submitted to the City of San Diego for inclusion in the revised MSCP, including necessary environmental review.
3. SPA One. The City of Chula Vista and the County of San Diego shall continue processing the Otay Ranch SPA One application and related documents (including but not limited to the SPA One tentative map, the Chula Vista Sphere of Influence, the initial Otay Ranch annexation, the Otay Ranch Overall Design Plan and Otay Ranch Phase 2 RMP).
4. General Plan Amendment. Soon after approval of the Otay Ranch SPA One Land Plan, tentative map and the annexation of SPA One into the City of

Chula Vista, the Baldwin Company shall initiate a General Plan Amendment applications through the City of Chula Vista and the County of San Diego seeking plan amendments to implement the components outlined in A, B, and C above. It is understood that as a private applicant, the applicant shall pay full cost recovery fees for the processing of the General Plan Amendments.

E. Timing

1. All parties understand that time is of the essence, with respect to the preparation, review and action on MSCP documents and SPA One related documents (as outlined above). Implementation of the MSCP Subarea Plan agreement is a distinct and separate process from the processing of SPA One related documents. Implementation of this agreement does not require delay of the timely consideration of SPA One related applications. To the contrary, failure to proceed with SPA One related applications jeopardizes the ability of The Baldwin Company to implement the elements of this agreement.
2. Implementation of the elements of this agreement is not dependent upon resolution of outstanding MSCP issues involving Otay Ranch properties not controlled by The Baldwin Company or Baldwin Company affiliates.

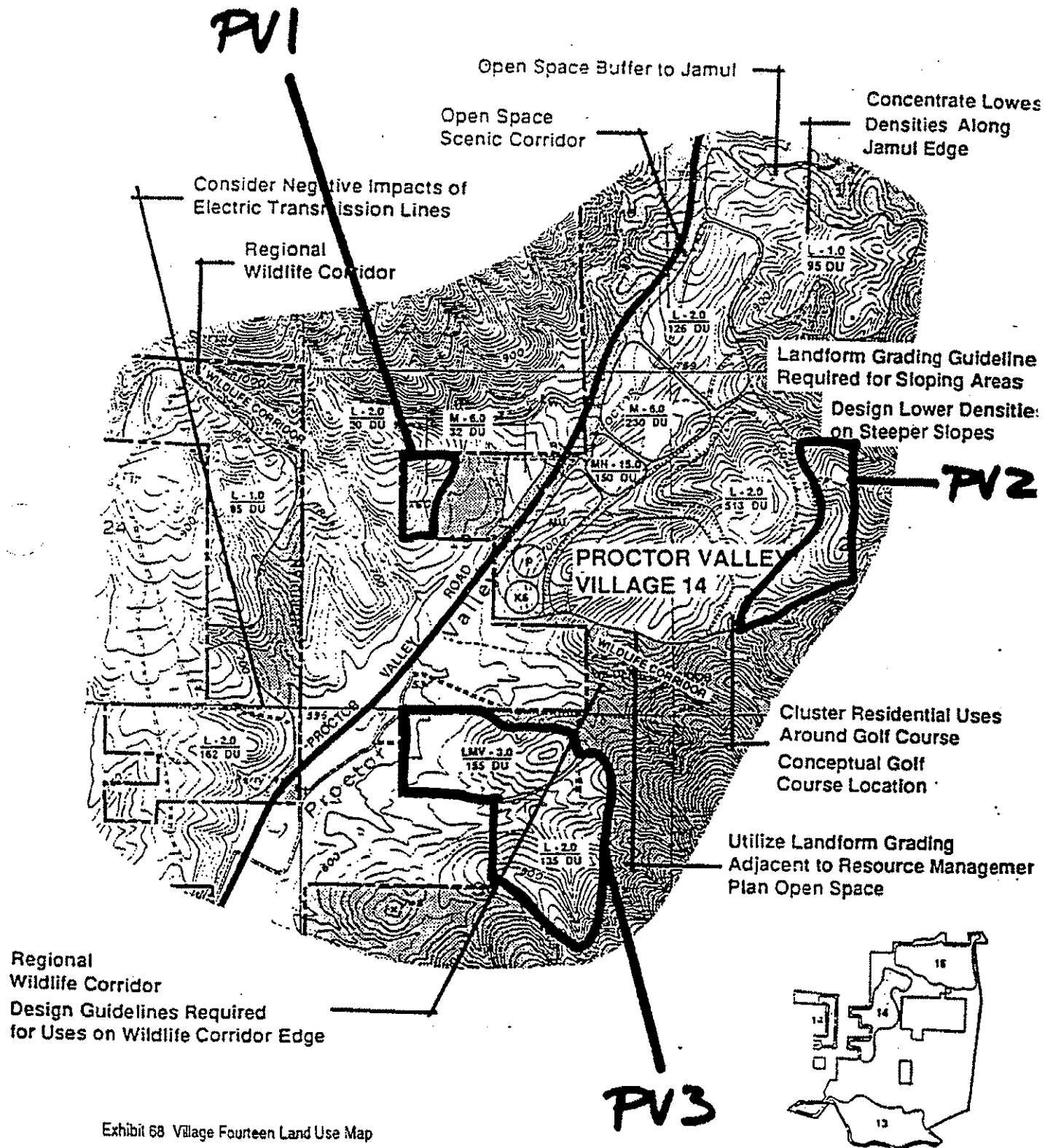


Exhibit 68 Village Fourteen Land Use Map

Exhibit 2

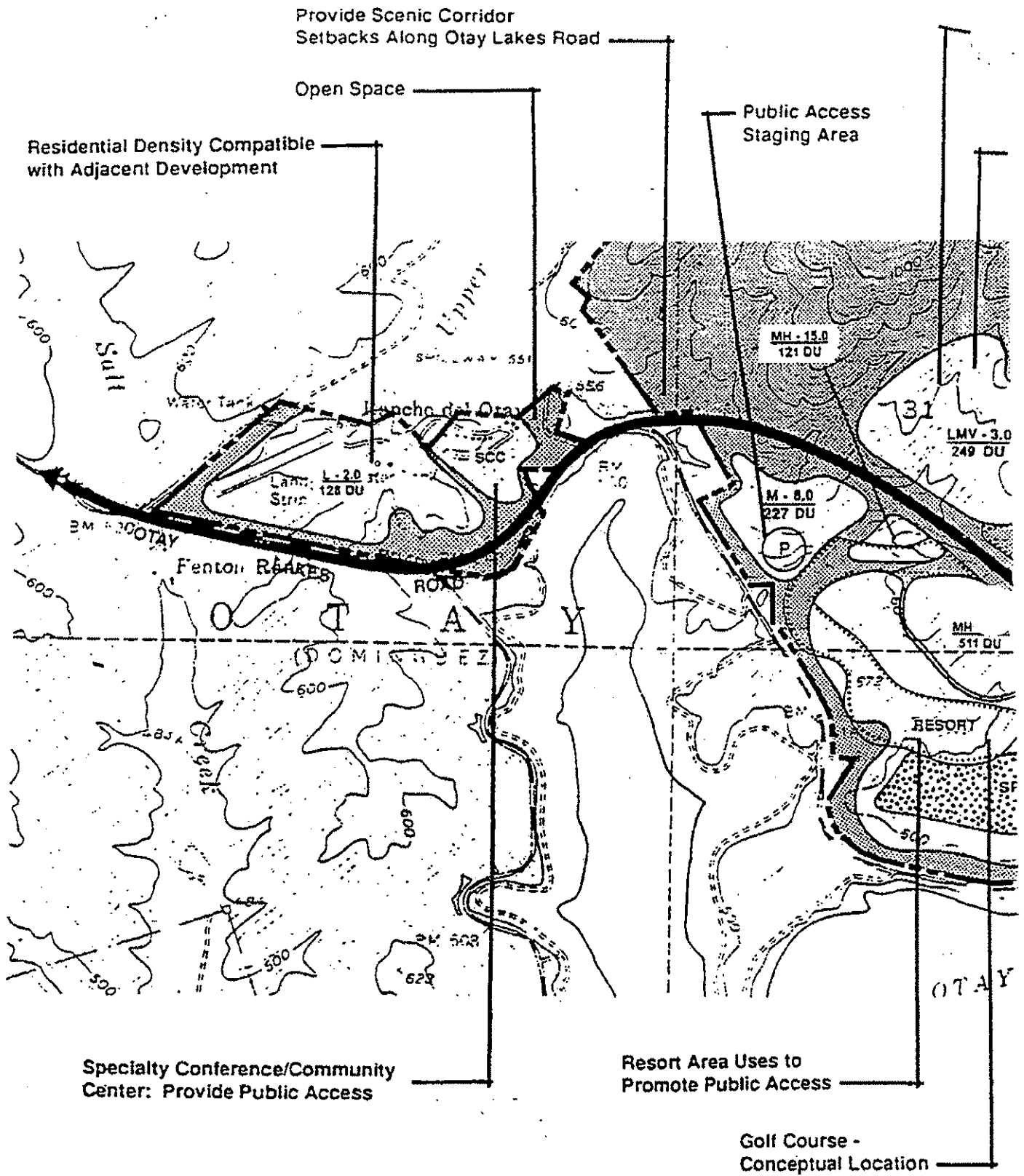
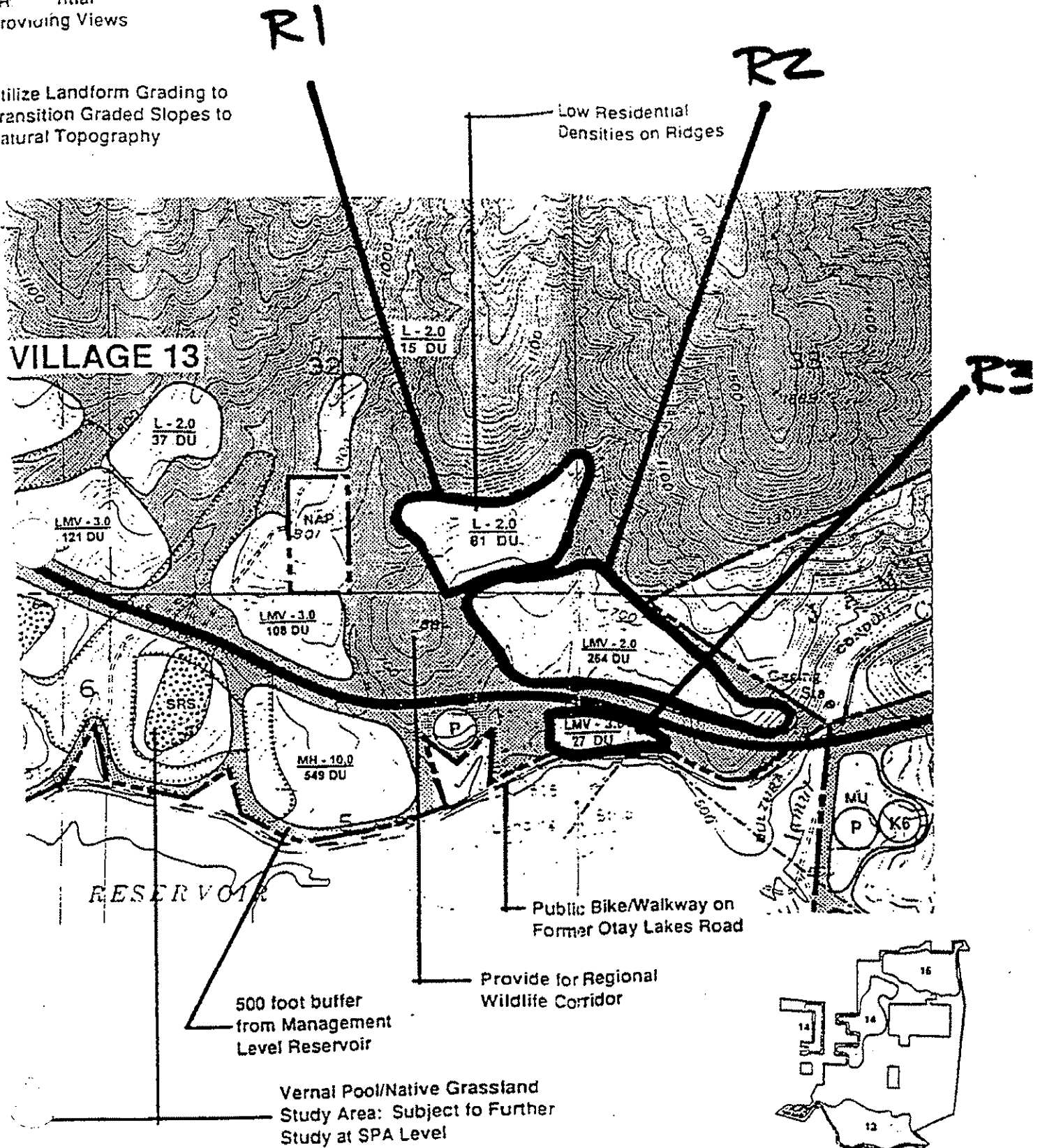


Exhibit 66 Resort Village Land Use Map

Partial
Providing Views

Utilize Landform Grading to
Transition Graded Slopes to
Natural Topography



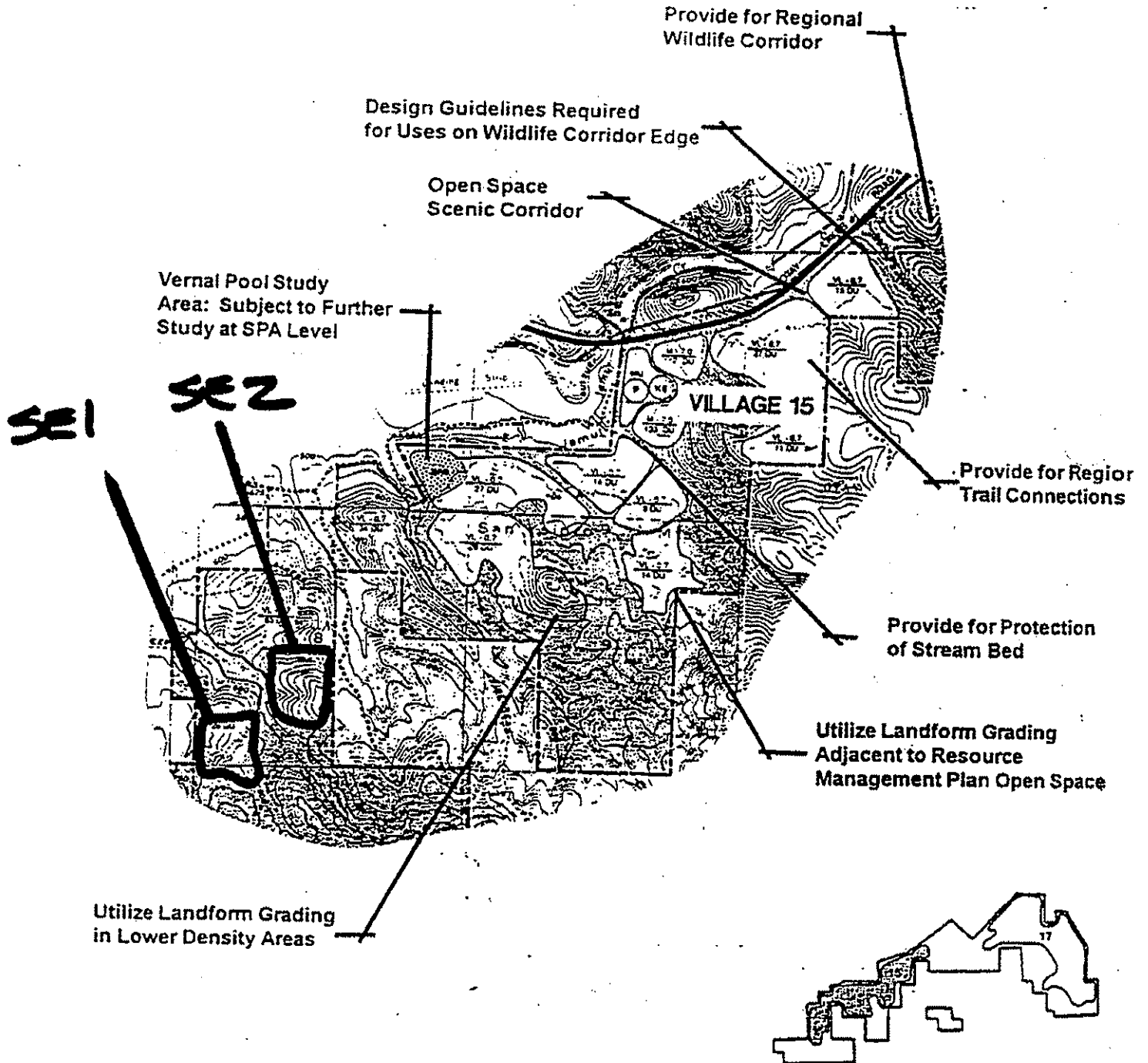
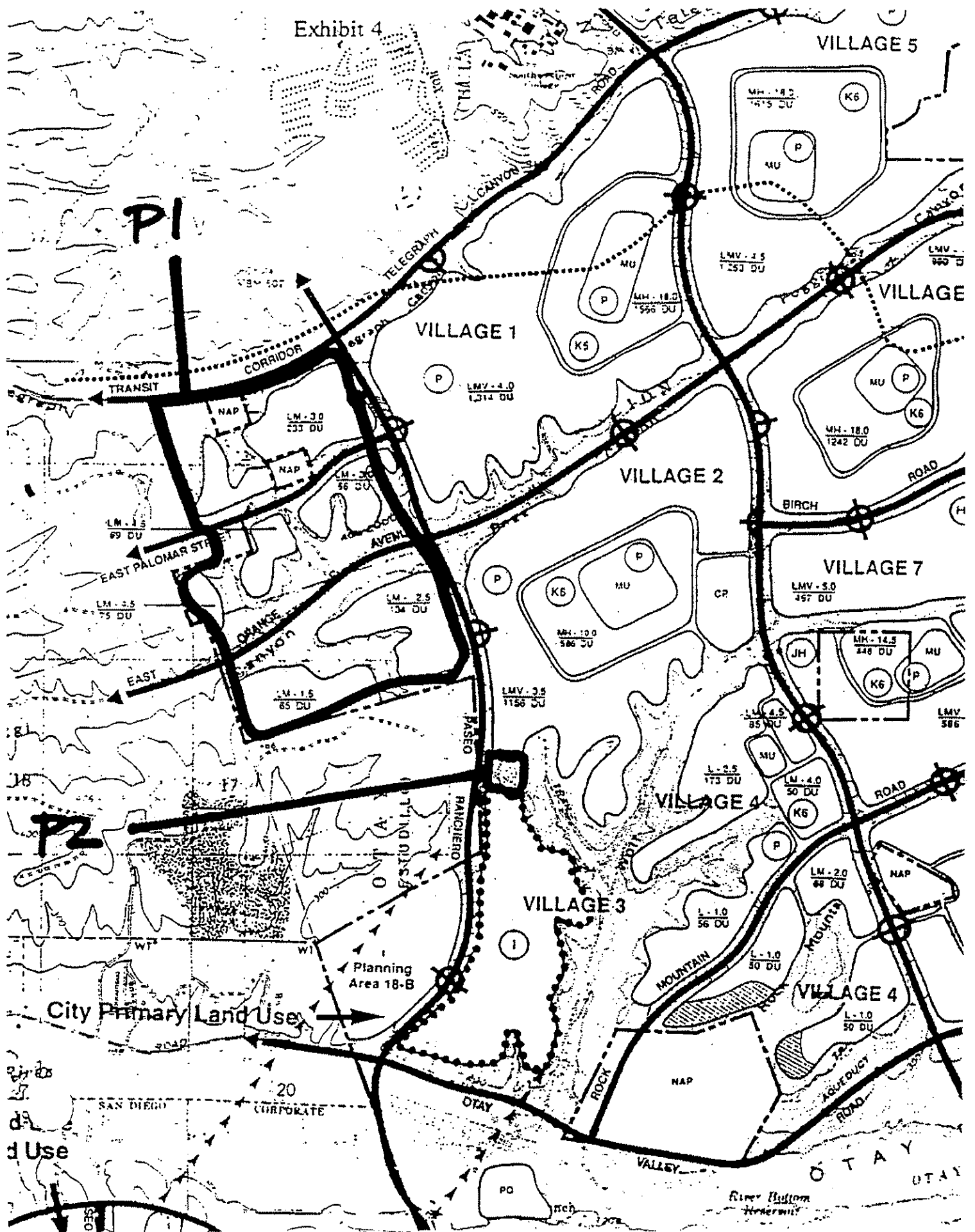
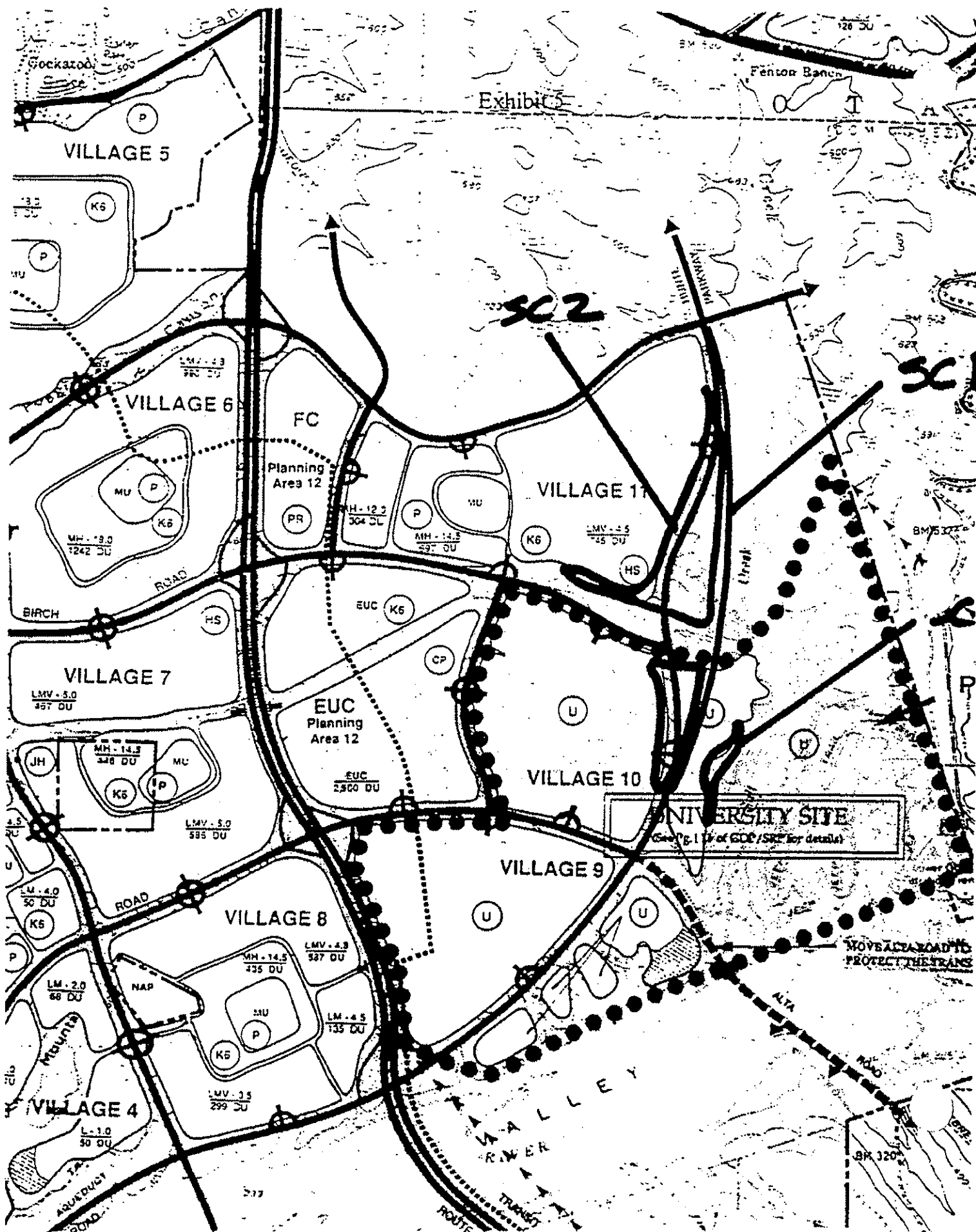


Exhibit 70 Village Fifteen Land Use Map

Exhibit 4.





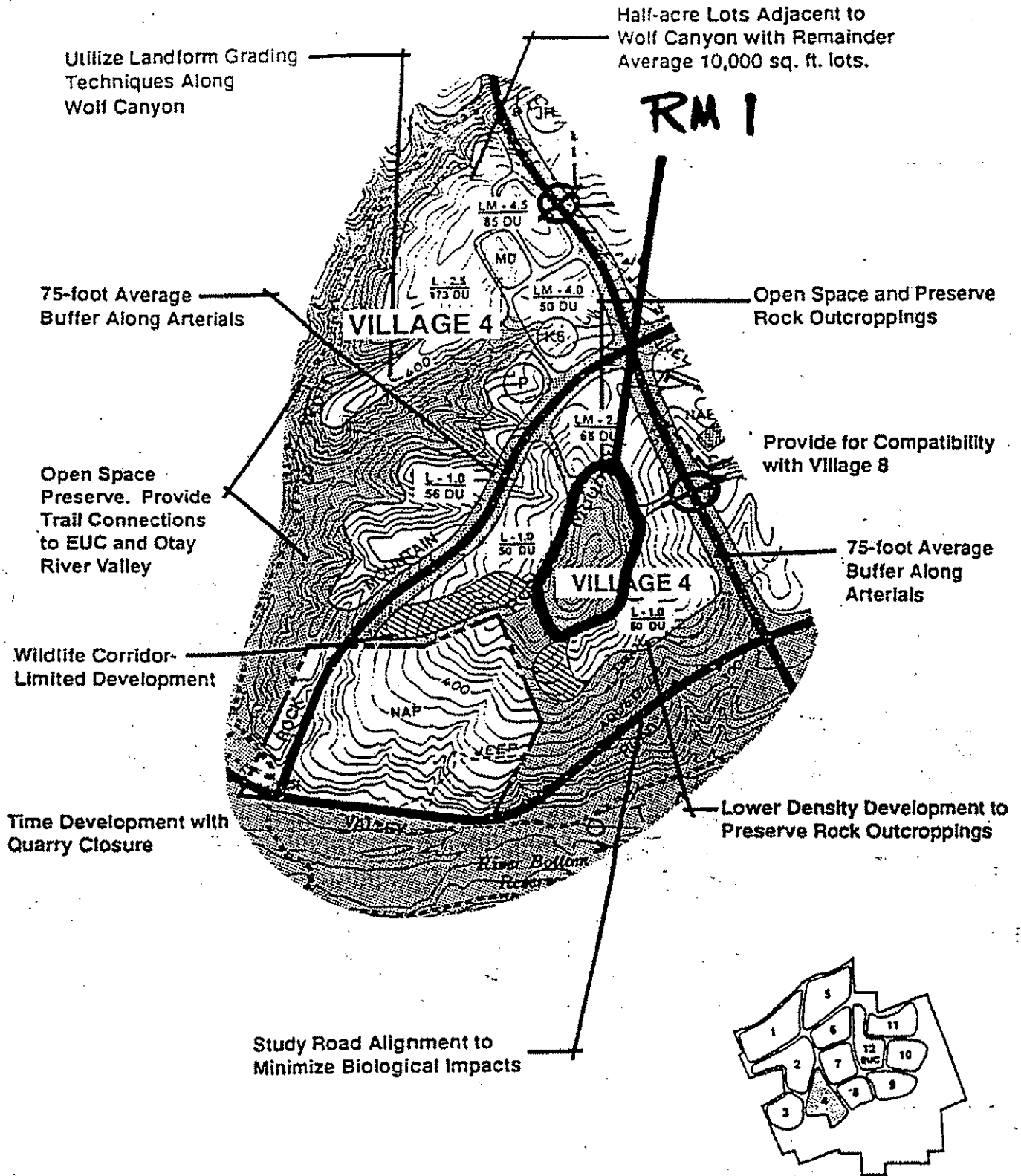
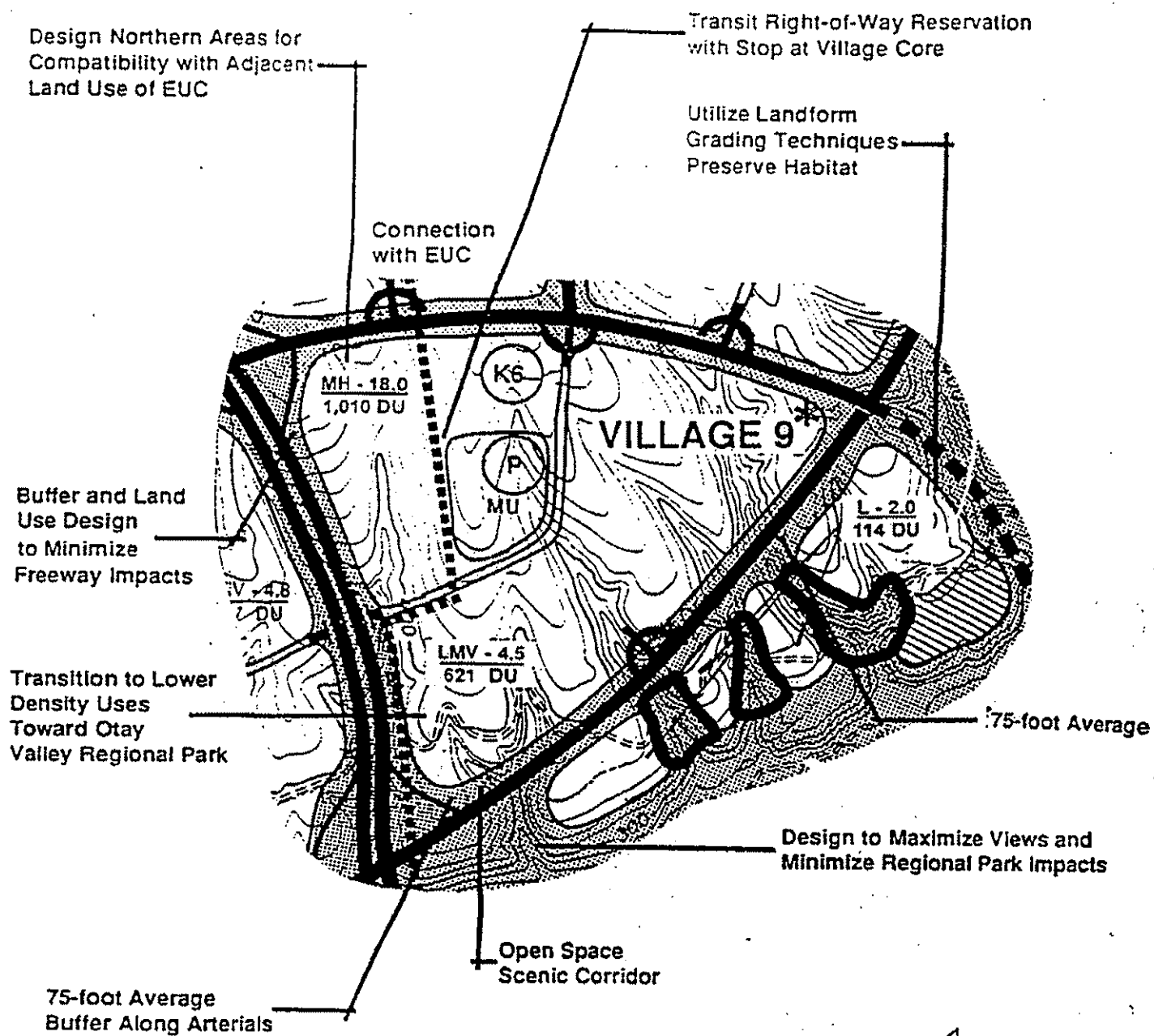


Exhibit 46 Village Four Land Use Map



* Primary use of Village 9 is University. Secondary use of Village 9 is depicted above. See Otay Ranch Land Use Designations Table, Part II, Chapter I, Section C.

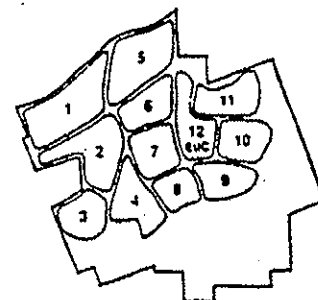


Exhibit 57 Village Nine Land Use Map - Secondary Residential Village Land Use

Attachment B



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(619) 431-9440
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1416 Ninth Street
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February 22, 1996

Mr. Kim John Kilkenny
The Baldwin Company
11975 El Camino Real, Suite 200
San Diego, CA 92130

Re: Comments on the Baldwin Company's proposed Otay Ranch MSCP Plan Agreement dated November 10, 1995.

Dear Mr. Kilkenny:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (Department) have reviewed the proposed Otay Ranch MSCP Plan Agreement (Agreement) dated November 10, 1995. The proposed Agreement between the Department, Service (collectively the Wildlife Agencies) and the Baldwin Company describes changes in the Otay Ranch Project to improve the preserve design for biological resources.

The basic elements of the Agreement are: (1) elimination and reduction in the development areas east of Otay Lake and in Proctor Valley; (2) increases in the size of the development bubbles in portions of the Otay Ranch west of Salt Creek; (3) realignment of Otay Valley Road/Hunte Parkway; (4) elimination of the revegetation requirements for coastal sage scrub habitat; (5) assumption of land management responsibility for Otay Ranch preserve lands east of Otay Lake and in Proctor Valley by the Service; and (6) elimination of the vernal pool study area at the resort site. The Agreement correctly characterizes the development transfers as generally described in numbers 1-3 above. Our comments on the remaining items are provided below.

The Wildlife Agencies agreed to the elimination of the revegetation requirement for coastal sage scrub habitat (approximately 1,300 acres) as proposed by Baldwin, but the Agreement also included the elimination of the revegetation requirement for maritime succulent scrub (MSS) habitat. The elimination of the revegetation requirement for MSS habitat is not

Mr. Kilkenny
February 22, 1996

acceptable to the Wildlife Agencies, and the Agreement should be modified to eliminate reference to MSS habitat. To achieve the protection of the Resource Management Plan (RMP), there must be no net loss of MSS habitat through a combination of preservation and restoration. Based upon the project reconfiguration and potential changes in impacts to MSS, the percent of MSS preserved on-site and the acreage to be restored must be recalculated to meet the RMP goals.

The Agreement should specify that the Service (or at Service's designation, the Department or the Bureau of Land Management) will be the recipient of all preserve lands east of Otay Lake and in Proctor Valley and that the Service will manage the transferred lands for their open space and wildlife values at no cost to the Otay Ranch project. Any rehabilitation (of transferred lands) required pursuant to the RMP would require Otay Ranch project funding. All lands transferred to the Service would be managed in accordance with the National Wildlife Refuge System Administrative Act of 1966 (Refuge Act). The Refuge Act provides for appropriate recreational uses on refuge lands. Prior to the transfer of any parcel(s) to the Service, all leases (including cattle grazing leases), annual use licenses, annual rental Agreements, etc. must be terminated by the landowner.

The revised Conveyance Plan would specify that all preserve lands east of Otay Lake, in Proctor Valley, and otherwise within the final National Wildlife Refuge planning boundary would be directly transferred to the Service. All lands conveyed to the Service must meet the Department of Justice standards for title. Additionally, the revised Conveyance Plan would specify that the Service shall be relieved of any and all RMP obligations associated with transferred lands. Upon finalization of the Agreement, the Conveyance Plan would have to be modified to reflect the changes. The management of preserve lands not transferred to the Service would remain the responsibility of Baldwin or the Preserve Owner Manager and would be managed pursuant to the RMP.

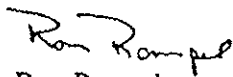
The elimination of the vernal pool study area within the resort site (Village 13) is acceptable to the Wildlife agencies, however, any impacts to the vernal pools must be addressed separately from this agreement through section 404 of the Clean Water Act.

The Department conceptually agrees that it will approve the establishment of a Habitat Maintenance District for the Otay Ranch consistent with the Otay Ranch GDP/SRP, RMP, and as modified by the Agreement. Final Department approval of a Habitat Maintenance District could not occur until all outstanding issues with the RMP and Conveyance Plan have been resolved, the specifics of the Habitat Maintenance District have been reviewed by the Department, and the South County and Chula Vista MSCP subarea plans have been approved by the Wildlife Agencies. Section C.3 should be revised appropriately.

Mr. Kilkenny
February 22, 1996

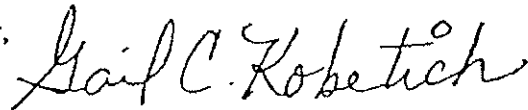
Based on the above understandings, the Wildlife Agencies will process the application for the necessary "take permits" for the development of the Otay Ranch consistent with the land-use entitlements contained in the Otay Ranch GDP/SRP and as modified by the Agreement. State and Federal permits for the Otay Ranch would be included in any approval of the County's MSCP South County Subarea Plan and the City of Chula Vista's MSCP Subarea Plan. The Wildlife Agencies anticipate that other outstanding issues associated with these plans, the conveyance plan, and the RMP will be resolved by late spring or early summer of this year. The State and Federal take authorizations would be issued consistent with the State and Federal Endangered Species Act, the NCCP Act, and following the required public noticing and National Environmental Policy Act review.

We look forward to finalizing the Agreement as soon as possible and suggest we set a target date for completion of the Agreement by March 30, 1996. If you have any questions regarding this letter, please contact Gail Kobetich at (619) 431-9440 or Ron Rempel at (916) 654-9980.



Ron Rempel
NCCP Program Manager
California Department of Fish and Game

Sincerely,



Gail C. Kobetich
Field Supervisor
U.S. Fish and Wildlife Service